



U.S. Citizenship
and Immigration
Services

B4

FILE:

Office: TEXAS SERVICE CENTER

Date:

OCT 07 2004

IN RE:

Petitioner:

Beneficiary:

PETITION:

Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The preference visa petition was initially approved by the Director, Texas Service Center. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. The director served the petitioner with notice of intent to revoke the approval of the preference visa petition, together with her reasons therefore. The director subsequently revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is an individual householder. He seeks to employ the beneficiary permanently in the United States as a household cook. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition.

The petition was initially approved on June 29, 2001. Following a review of the record, including a recommendation from the U.S. consulate in Mumbai (f/k/a Bombay), India, the director issued a notice of intent to revoke the petition on June 3, 2003. The petitioner's response and subsequent submission of additional evidence failed to convince the director to revise her decision and the petition's approval was revoked on August 4, 2003.

The petitioner filed an appeal. The regulation at 8 C.F.R. § 205.2(d) provides that a petitioner "may appeal the decision to revoke the approval within 15 days after the service of notice of the revocation." When computing a period of time for taking any action, including taking an appeal from a decision, the term *day* includes Saturdays, Sundays, and legal holidays. 8 C.F.R. § 1.1(h). Three additional days are provided if the decision was mailed. In this case, the petitioner's appeal was due 18 days following the date of the notice of revocation, or by Friday, August 22, 2003. The record shows that it was not received until August 26, 2003.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

Accordingly, the petitioner's appeal is rejected as untimely filed.

ORDER: The petitioner's appeal is rejected.